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January 26, 2024

By ECF

Hon. P. Kevin Castel
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Application DENIED. The filing of a certiorari petition is not a reason to forgo the taxation of costs, recognizing that subsequent events could cause the need for a further revision of the taxed costs.

SO ORDERED.

Dated: 1/29/24



P. Kevin Castel
United States District Judge

**Re: *Cunningham v. Cornell University*, No. 1:16-cv-6525-PKC
Letter motion to extend deadline to object to Defendants' Bills
of Costs and to adjourn cost proceedings pending disposition of
potential petition for writ of certiorari**

Dear Judge Castel:

Pursuant to Rule I.C of Your Honor's Individual Practices, Plaintiffs respectfully move the Court for an adjournment of the date on which the Clerk may tax costs and extension of the due date for Plaintiffs' objections to Defendants' Bills of Costs, currently February 2, 2024, until the later of 14 days after the March 19, 2024 due date for a petition for writ of certiorari (*i.e.*, April 2, 2024) or the final disposition of any petition. This date has not previously been extended. Defendants have no objection to this request.

The Second Circuit issued its opinion affirming this Court's judgment on November 14, 2023, and denied rehearing on December 20, 2023. *Cunningham v. Cornell Univ.*, 86 F.4th 961 (2d Cir. 2023); Dkt. No. 302 in 2d Cir. No. 21-88. Accordingly, the due date for any petition for a writ of certiorari is March 19, 2024, 90 days after the date of the denial of rehearing. *See S. Ct. R. 13.3*.

On January 19, 2024, Defendant CAPTRUST and the Cornell Defendants filed separate notices of taxation and bills of costs. Dkt. Nos. 453–55. The accompanying docket text for each filing states: "The Clerk may tax costs 14 days after this filing. Objections to Bill of Costs due by 2/2/2024." Dkt. Nos. 453–54.

Plaintiffs are considering a petition for a writ of certiorari. Among other potential grounds for review, the Second Circuit acknowledged that its opinion implicates a circuit conflict regarding the scope of ERISA's prohibited transaction provisions and related pleading standards. *Cunningham*, 86 F.4th at 973–78. Because further proceedings could affect the finality of the judgment and assessment of costs, an

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adjournment is appropriate until all potential appeals are resolved. *See* L. Civ. R. 54.1(a) (“Costs will not be taxed during the pendency of any appeal.”).

For these reasons, Plaintiffs respectfully request that the Court continue the date on which the Clerk may tax costs and extend the due date for Plaintiffs’ objections to Defendants’ Bills of Costs from February 2, 2024 until the later of April 2, 2024 (14 days after the March 19, 2024 due date for a petition for writ of certiorari) or the final disposition of any such petition. Plaintiffs will promptly notify the Court of the filing of any petition and its disposition.

Respectfully submitted,



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